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RULE PROPOSALS

AGRICULTURE

**DIVISION OF AGRICULTURAL AND NATURAL RESOURCES
STATE SOIL CONSERVATION COMMITTEE**

42 N.J.R. 1937(a)

Proposed Readoption: N.J.A.C. 2:90

[Click here to view Interested Persons Statement](#)

Authorized By: State Soil Conservation Committee and Douglas H. Fisher, Secretary, Department of Agriculture. Authority: N.J.S.A. 4:1C-24, 4:24-3 and 4:24-42.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-202.

[page=1938] Submit comments by November 6, 2010 to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 2:90 is scheduled to expire on August 5, 2011. The Department of

Agriculture has reviewed these rules, and, found them to be necessary, reasonable and proper for the purposes for which they were promulgated.

Pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-39 et seq., the rules proposed for readoption, require that approval of applications for development where more than 5,000 square feet of land surface area is disturbed, must be conditioned upon certification of a plan for soil erosion and sediment control by the local soil conservation district wherein the soil disturbance occurs.

The State Soil Conservation Committee (SSCC) is empowered and required to promulgate technical and administrative standards for such controls for Statewide implementation. This has been previously accomplished through promulgation of N.J.A.C. 2:90-1. Certain municipalities with erosion control ordinances that were approved by the SSCC implement their programs concurrently and the soil conservation district is charged with monitoring municipal performance and reporting to the SSCC annually. The SSCC proposes to readopt N.J.A.C. 2:90-1 to provide orderly continuation of the implementation of the Act by the SSCC and local districts and enhance coordination between districts and municipalities that regulate construction activities.

N.J.A.C. 2:90-1.1 identifies the roles and responsibilities of the Committee and conservation districts.

N.J.A.C. 2:90-1.2 contains definitions.

Soil Erosion and Sediment Control Standards are enumerated in N.J.A.C. 2:90-1.3.

N.J.A.C. 2:90-1.4 describes the procedures and documentation necessary for Soil Erosion and Sediment Control application submission.

N.J.A.C. 2:90-1.5 describes the single-family dwelling exemption parameters.

N.J.A.C. 2:90-1.6 describes requirements for mining and quarrying activities.

N.J.A.C. 2:90-1.7 defines when a demolition project that involves reconstruction would be regulated by the Act.

N.J.A.C. 2:90-1.8 describes when clearing and grading is regulated or is otherwise determined to be an agricultural exemption with the proofs required necessary for an appropriate district determination.

N.J.A.C. 2:90-1.10 describes revision requirements for a certified plan.

N.J.A.C. 2:90-1.11 identifies roles and responsibilities of municipalities that enforce provisions of the Act through local ordinance.

N.J.A.C. 2:90-1.12 prescribes guidance concerning district fees and includes a uniform fee schedule for projects occurring on Federally owned property.

N.J.A.C. 2:90-1.13 describes compliance and enforcement procedures.

N.J.A.C. 2:90-1.14 describes the parameters for issuance of a Report of Compliance by the local Soil Conservation District.

N.J.A.C. 2:90-1.15 describes reporting requirement for Districts to the State Soil Conservation Committee.

N.J.A.C. 2:90-1.16 describes the appeal process.

The Act is also administered in conjunction with the NJ Department of Environmental Protection's stormwater construction general permit NJ0088323 that is also implemented by soil conservation districts and the SSCC. The

permit is required for most land disturbance activities greater than one acre in size. The rules proposed for readoption will enable persons proposing to engage in development activities to meet both mandates and obtain erosion control plan approval upon which municipal land development approvals are conditioned.

These rules are an initiative to implement the legislative findings in N.J.S.A. 4:24-40 to implement a Statewide comprehensive and coordinated program to reduce stormwater runoff and retard non-point pollution from sediment, to implement through the State Soil Conservation Committee and soil conservation districts in coordination with counties, the municipalities and the Department of Environmental Protection.

N.J.A.C. 2:90-2 and 3 are comprised of the eligible conservation projects and procedural rules necessary for implementing the conservation practices, cost-share provisions of the Farmland Preservation Program. Specifically, they describe eligible soil and water projects and procedural rules for the approval of applications for cost sharing pursuant to the Agricultural Retention and Development Act, N.J.S.A. 4:1C-11 (P.L. 1983, c. 32). The rules are utilized in conjunction with N.J.A.C. 2:76-5. The State Soil Conservation Committee proposes to readopt N.J.A.C. 2:90-2 and 3 with no amendments.

N.J.A.C. 2:90-2.1 identifies applicability of specific conservation practices for inclusion into the soil and water conservation cost sharing program.

N.J.A.C. 2:90-2.2 provides definitions.

N.J.A.C. 2:90-2.3 provides the necessity of all eligible soil and water conservation projects to conform with relevant technical specifications.

N.J.A.C. 2:90-2.4 describes eligibility of soil and water conservation projects.

N.J.A.C. 2:90-2.5 provides requirements for terrace systems.

N.J.A.C. 2:90- 2.6 provides requirements for diversions.

N.J.A.C. 2:90- 2.7 provides requirements for contour farming.

N.J.A.C. 2:90-2.8 provides requirements for stripcropping systems.

N.J.A.C. 2:90-2.9 provides requirements for sod waterways.

N.J.A.C. 2:90-2.10 provides requirements for windbreak restoration or establishment.

N.J.A.C. 2:90-2.11 provides requirements for stream protection.

N.J.A.C. 2:90-2.12 provides requirements for permanent vegetative cover.

N.J.A.C. 2:90-2.13 provides requirements for landshaping.

N.J.A.C. 2:90-2.14 provides requirements for water impoundment reservoirs.

N.J.A.C. 2:90-2.15 provides requirements for irrigation systems.

N.J.A.C. 2:90-2.16 provides requirements for sediment retention, erosion or water control structures.

N.J.A.C. 2:90-2.17 provides requirements for permanent open drainage systems.

N.J.A.C. 2:90-2.18 provides requirements for underground drainage systems.

N.J.A.C. 2:90-2.19 provides requirements for livestock watering.

N.J.A.C. 2:90-2.20 provides requirements for forest tree stand improvement.

N.J.A.C. 2:90-2.21 provides requirements for forest tree plantations.

N.J.A.C. 2:90-2.22 provides requirements for forest natural regeneration.

N.J.A.C. 2:90-2.23 provides requirements for animal waste control facilities.

N.J.A.C. 2:90-2.24 provides requirements for agrichemical handling facilities.

N.J.A.C. 2:90-2.25 outlines cost share rates.

N.J.A.C. 2:90-3.1 identifies procedural requirements.

N.J.A.C. 2:90-3.2 contains definitions.

N.J.A.C. 2:90-3.3 describes landowner eligibility.

N.J.A.C. 2:90-3.4 outlines application procedures.

N.J.A.C. 2:90-3.5 outlines feasibility determinations.

N.J.A.C. 2:90-3.6 outlines conservation plan preparation requirements.

N.J.A.C. 2:90-3.7 outlines procedures for coordination with Federal cost share programs.

N.J.A.C. 2:90-3.8 outlines the district approval process.

N.J.A.C. 2:90-3.10 describes payment procedures.

N.J.A.C. 2:90-3.11 outlines maintenance responsibilities.

N.J.A.C. 2:90-3.12 describes compliance requirements.

N.J.A.C. 2:90-3.13 describes reporting requirement for districts to the State Soil Conservation Committee.

N.J.A.C. 2:90-4 is comprised of the administrative and program requirements and eligible conservation practices for implementing the State Conservation Cost Share Program (CCSP). These rules assist [page=1939] farmers with implementation of conservation and water quality management practices on their farmlands. The CCSP is closely coordinated and nearly identical to the U.S. Department of Agriculture (USDA) Environmental Quality Incentives Program (EQIP) of 1999 through 2001 and nearly identical to those rules that support voluntary landowner participation and implementation of nonpoint source pollution control practices. However, at this time, the program does not receive State cost share funding.

N.J.A.C. 2:90-4.1 identifies applicability of specific conservation practices for inclusion into the conservation cost sharing program (CCSP).

N.J.A.C. 2:90-4.2 outlines SSCC administrative requirements.

N.J.A.C. 2:90-4.3 contains definitions.

N.J.A.C. 2:90-4.4 describes participant contract requirements.

N.J.A.C. 2:90-4.5 outlines maintenance responsibilities.

N.J.A.C. 2:90-4.6 outlines cost share and incentive payment rates.

N.J.A.C. 2:90-4.7 describes contract modification and land transfer procedures.

N.J.A.C. 2:90-4.8 describes contract compliance requirements.

N.J.A.C. 2:90-4.9 describes the appeal process.

N.J.A.C. 2:90-4.10 describes participant responsibility.

N.J.A.C. 2:90-4.11 authorizes right of entry by designated SSCC or SCD representative.

N.J.A.C. 2:90-4.12 describes penalty for misrepresentation by program participant.

N.J.A.C. 2:90-4.13 through 4.18 are reserved.

As the Committee has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption will have a positive social impact by protecting water quality through controlling soil erosion and sedimentation related to construction, mining and land development activities.

The rules proposed for readoption at N.J.A.C. 2:90-1, as described in the Summary above, are comprised of rules to implement the Soil Erosion and Sediment Control Act will have a favorable impact upon citizens of New Jersey through the continued control of soil erosion and sedimentation from construction and mining activities. Quality of life and the environment will be enhanced through the prevention of soil erosion damages and provide for the proper water quality protection for all construction activities.

Furthermore, the rules proposed for readoption at N.J.A.C. 2:90-2 and 3, prescribing eligible conservation cost share practices and procedural rules, will enable farmland owners enrolled in Farmland Preservation Programs to receive cost share funding for approved soil and water conservation practices up to 75 percent based upon available funding. The program will enhance the environment and promote the continuation of agricultural operations thereby providing a benefit to all citizens.

N.J.A.C. 2:90-4 prescribes the procedural rules for the Conservation Cost Share Program for existing applications and will assure that farms presently enrolled and implementing soil and water conservation practices will receive program benefits that are designed to improve water quality and thereby providing a positive social impact. If new funds are allocated by the State, then the companion Federal rules in effect at that time are adopted by reference as the basis for implementing this cost share program resulting in a positive social impact.

Economic Impact

The proposed readoption of N.J.A.C. 2:90-1, prescribing the Soil Erosion and Sediment Control Act rules, will have a favorable impact on the public through improved consistency among conservation district and exempt municipality enforcement of their respective erosion control programs. By reducing losses of soil and sediment damages from construction, mining and other land disturbances; and provide for a timely transition and stabilized site from the builder to home or business owner. Enhancement of water quality will be continued, thereby reducing public costs for correcting such problems. Persons who engage in land disturbances will be required to prevent offsite damages at their own costs, thereby eliminating or reducing public costs for correcting such damages.

Costs for corrective measures have been demonstrated to be at least 20 times the cost of the preventive measures that are established by these rules. A significant public cost benefit will result. The lack of compliance may result in additional costs related to fines assessed by the courts and costs associated with additional inspections for securing compliance.

The Committee proposes to maintain the Federal facilities fee schedule at the currently indicated rate therefore the rules proposed for readoption bear a minor economic impact on Federal projects. It is estimated that less than one quarter of one percent of applications received per year by districts (10 applications or less) will be from Federal facilities.

Readoption of N.J.A.C. 2:90-2, prescribing eligible conservation practices, and 2:90-3, prescribing the procedural rules for the Farmland Preservation Cost Share Program as described in the Summary above, will have a positive economic impact by assuring that all agency approvals are granted in a manner that is fully accountable with the requirements of the cost share provisions of the Agricultural Retention and Development Act.

Readoption of N.J.A.C. 2:90-4, prescribing CCSP rules and eligible practices that align the Federal EQIP program with the State CCSP program encourages landowners to make capital investments in nonpoint pollution control practices. The resulting practices will enable farmers to comply with environmental regulations thereby enabling them to enhance agricultural production efficiency and promote competitive marketing of products. This subchapter will not impact new participants until State cost share funds are once again available.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require State agencies which adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

N.J.A.C. 2:90-1 is solely related to the administrative functions of the State Soil Conservation Committee and the Soil Conservation Districts and is not subject to any Federal requirements or standards. The rules provide the necessary clarification to satisfy an unambiguous waiver of sovereign immunity as set forth in the Federal Clean Water Act, through the promulgation of a uniform fee for Federal facility projects.

N.J.A.C. 2:90-2, 3 and 4 adopt Federal technical standards in the USDA Natural Resources Conservation Service, Field Office Technical Guide (FOTG) and the Federal rules for the EQIP program (7 CFR Part 1466) for the Conservation Cost Share Program. These subchapters meet, but do not exceed Federal standards and therefore, no Federal standards analysis is necessary.

Jobs Impact

The Department does not anticipate any creation or loss of jobs as a result of the rules proposed for readoption.

Agriculture Industry Impact

For the reasons set forth in the Summary, Social Impact and Economic Impact statements above, the rules proposed for readoption will have a positive impact on New Jersey's Agriculture Industry. Further, enabling farmers to comply with environmental requirements will help sustain the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption have been reviewed for compliance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules in N.J.A.C. 2:90-1, pursuant to the Soil Erosion and Sediment Control Act, as described in the Summary above, directly impact contractors in the State. Virtually all clients under this program are considered

small businesses as defined by the Regulatory Flexibility Act and as such are treated equally. The rule at N.J.A.C. 2:90-1.5 is designed to exempt the construction of one single-family dwelling and other disturbances less than 5,000 square feet in size from regulation under defined parameters.

Compliance by all projects as defined in the Act, without exception has been determined to be necessary because similar negative environmental impacts may result from any land development activity. The cost for implementing erosion controls is integral to the land development process, protection of offsite property and protecting water [page=1940] quality. Costs will vary according to the size and scope of the project. The professional services that develop plans for certification by the district are primarily professional engineers. The rule prescribes reporting requirements by municipalities to conservation districts on municipal actions taken on soil erosion and sediment control plans, so that districts may issue the mandated Stormwater Construction General Permit (NJ0088323) and to assure erosion control program performance is equivalent to district enforcement. The rules also provide for district reporting to the State Committee.

The majority of farmland owners affected by the conservation cost share programs in N.J.A.C. 2:90-2, 3 and 4 are small businesses as defined by the Regulatory Flexibility Act. Technical assistance for developing conservation plans is a no-cost service to the land owner provided by the USDA Natural Resources Conservation Service. Most land treatment soil and water conservation practices can be characterized as practical and effective. Some structural practices may be costly, based on the local costs for construction, such as large animal waste management systems that are sized by the number of animals in the applications operation. The applicant must provide up to 50 percent of the eligible practice costs. The costs for the practices are based on average costs within the county, which costs schedules are available from the local soil conservation district office. Participation in either program is voluntary. There are application and compliance requirements for participation in the cost share programs. The compliance requirements are based on field proven standards and are integral and essential to the program. Since all plans are site-specific, lesser or differing standards are applied based upon business size and operation type.

Smart Growth Impact

The rules proposed for readoption will have no impact upon the achievement of smart growth or upon the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing. As described in the Economic Impact statement above, costs for corrective measures have been demonstrated to be at least 20 times the cost of the preventive measures that are established by these rules. Persons who engage in land disturbances will be required to prevent offsite damages at their own costs, thereby eliminating or reducing public costs for correcting such damages. The rules also provide an exemption for those proposed activities that fall under the 5,000 square foot threshold or are single-family lot construction activities not covered under N.J.A.C. 2:90-1.5.

Smart Growth Development Impact

N.J.S.A. 52:14B-4.1 requires that prior to the adoption, amendment or repeal of any rule pursuant to N.J.S.A. 52:14B-4(a), State agencies include a Smart Growth Development Impact Statement. The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in house production in Planning Areas 1 or 2 within designated centers under the State Development and Redevelopment Plan in New Jersey because N.J.A.C. 2:90-1 provides uniform Statewide guidance on soil erosion and sediment control measures based upon proposed extent of land disturbance not zoning or planning considerations, while N.J.A.C. 2:90-2, 3 and 4 provide guidance on soil and water conservation best management practices that are eligible to receive State cost share funding for agricultural producers.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:90.